Van Schaik

The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: VARTA Batterie AG

File: B-225484

Date: March 19, 1987

DIGEST

Protest that offer for an "equal" product was improperly accepted is denied where protester is unable to show that agency's technical judgment that awardee's product meets the solicitation's salient characteristics is unreasonable.

DECISION

VARTA Batterie AG protests the award of a contract to Firm-Helmut Gessler GmbH by the Army under request for proposals (RFP) No. DAJA37-86-R-0834, for nickel cadmium batteries to supply power for moving firing range targets. VARTA contends that the batteries offered by Gessler do not meet the solicitation's requirements. We deny the protest.

The solicitation's amended schedule reads as follows:

"0001	Battery, 24 V, 40 AH, Nickel Cadmium NATO Stock # 6140-12-172-9060 Must meet DIN 29831B VARTA # 3343409140 or equal	330 EA
0002	Battery, 12 V, 40 AH, Nickel Cadmium NATO Stock # 6140-12-183-4058 The battery cell must meet the specifications of VG95238-T-27 VARTA # 3343406000 or equal"	260 EA

This was the entire purchase description in the solicitation; no other technical specifications or requirements were set forth.

Eight firms submitted proposals. Three offerors, including Gessler, offered batteries made by SAFT, a French company, as "equal" to the brand name items. These proposals were submitted to the agency engineers for technical evaluation. The technical evaluation report states that the SAFT batteries offered by Gessler and the other two firms are "technically acceptable." Award was made to Gessler as the low offeror.

VARTA principally contends that the SAFT batteries offered by Gessler are not equal to the listed VARTA brand name products because they do not meet the requirements of the purchase description. VARTA argues, for instance, that VG 95238-T-27 (VG-27) and DIN 29381B (DIN), which are a part of the purchase description for the 12 volt and the 24 volt batteries, respectively, require the batteries to comply with VG 95238-T-10 (VG-10), which in turn, according to the protester, mandates a battery cell design that allows adjustment of the electrolyte level at any state of charge. According to VARTA, the electrolyte level of the SAFT batteries can only be safely adjusted at the end of the charge cycle.

Under a brand name or equal solicitation products offered as "equal" must meet the "salient characteristics" of the brand name product. See Hedco, Hughes Electronic Devices, Corp., B-221332, Apr. 7, 1986, 86-1 CPD ¶ 339. Although here the solicitation did not contain a list of salient characteristics explicitly designated as such, it stated that "equal" products must meet either VG-27 or DIN, both of which incorporate extensive standards. When a solicitation sets forth particular features of a brand name item, these are presumed to be material and essential to the government's minimum needs. Western Graphtec, Inc., B-216948 et al., Apr. 2, 1985, 85-1 CPD ¶ 381. Thus, the standards incorporated by VG-27 or DIN are salient characteristics required to be met by products offered as "equal." In determining whether a particular item meets the solicitation's technical requirements set forth in the salient characteristics, a contracting agency enjoys a reasonable degree of discretion and we therefore will not disturb its technical determination unless it is shown to be unreasonable. Panasonic Industrial Co., B-207852.2, Apr. 12, 1983, 83-1 CPD ¶ 379. Further, the protester must show that the agency's determination is unreasonable; the protester's mere disagreement with the agency's technical judgment does not make it unreasonable. Rowe Industries, B-215881, Oct. 24, 1984, 84-2 CPD ¶ 464.

VG-27 and DIN incorporate standard VG-10 which states:[1]/

> "The battery must be so designed, that it is possible to adjust the electrolyte level with purified water to at least the upper edge of the separator regardless of the state of charge of the battery, and must preclude the possibility of electrolyte escaping from the battery during subsequent charging with the vent plug removed."

VARTA argues that the SAFT batteries do not comply with this standard since adjustment of electrolyte in these batteries is not permitted at any state of charge but only near the end of a charge. VARTA says that if water is added to the electrolyte at the wrong time the design of SAFT's batteries does not "preclude the possibility of electrolyte escaping from the battery during subsequent charging." In support of its position, the protester cites the SAFT battery maintenance manual which states at section 3.5:

> "ELECTROLYTE LEVEL ADJUSTMENT
> CAUTION: The addition of water by any method other than that given below is prohibited as it may cause spewing and loss of electrolyte during overcharge.
>
> . . . . .
>
> The electrolyte is at its maximum level and is most uniform from cell to cell near the end of the recommended constant current charge with the charging current still flowing. . . . Therefore, the level may now be most accurately adjusted with a minimum of variation from cell to cell."

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[1]/ There is a complex relationship among all these standards, the exact nature of which has not been made clear by either the agency or the protester. In any event, no party disputes that the above-cited standard for electrolyte adjustment governs.

We do not think that this shows that the SAFT battery fails to meet the VG-10 standard. Although the SAFT manual cautions that electrolyte adjustment is prohibited by any other than the described method, it does not specifically prohibit adjustment at other than the end of a charge. Rather, the manual says that the electrolyte may be most accurately adjusted near the end of the charge. Moreover, as the Army explains, VARTA's manual also says that electrolyte "leveling shall be done 15 minutes before the end of charge." In both cases it appears that the best time to add to the electrolyte is just before the end of the charge. According to the SAFT manual, the result of adding to the electrolyte at other than the specified time is not, as the protester contends, the loss of electrolyte during subsequent charging, but possible loss during overcharge. There is no warning in the manual that electrolyte could be lost during normal charging. VG-10 specifically states that adjustment of electrolyte must not result in loss during subsequent charging. Consequently, VARTA has not shown that the SAFT battery will not meet the VG-10 standard for electrolyte adjustment.

VARTA also contends that batteries offered as "equal" are required to have a steel spring battery cell vent plug and that SAFT's batteries are unacceptable because they use a rubber seal vent plug. According to the protester, a rubber seal is not as safe since it does not have the same blow-off pressure as the steel spring design.

VG-95238-T-3 (VG-3), which is incorporated into the solicitation by VG-27, describes three vent plug designs, designated as "B," "C," and "D." VARTA argues that under VG-10 (also incorporated by VG-27), only design "C" which employs a steel spring (SAFT uses design "D" which uses the rubber seal) is acceptable. As we read the portions of the standards which have been included in the protest record, there is no clear requirement that design "C" be used. As indicated above, designs "B", "C" and "D" all seem to be listed as acceptable. The only other evidence supplied by the protester in support of its view is a single page from an unidentified document. This page, which is not in English, contains a chart which seems to link design "C" with VG-10, but contains no explanation. We do not think that is sufficient to show that the agency's conclusion that the rubber seal design is acceptable is erroneous.

Both the protester's and the Army's submissions contain extensive arguments concerning whether the SAFT batteries have been certified under the French National Specification, AIR

8421, and whether a battery certified under that specification is listed in NATO, AStanP-3, Annex I or Annex II. Neither party has made clear either the relationship among these various documents or the impact of this debate on the other protest issues. We think, however, that the Army is attempting to argue that even if the SAFT batteries do not meet the specific VG standards regarding electrolyte adjustment and vent plug design, they are nevertheless acceptable because they are certified under AIR 8421, which, according to AStanP-3, means the batteries are equal in performance to those meeting VG-27. While it is clear that the protester disagrees, we need not decide the matter because we have decided that the agency's conclusion that the SAFT batteries meet the VG-27 requirements both for electrolyte adjustment and vent plug design is not unreasonable.

Finally, in its initial protest letter, VARTA also argued that: (1) SAFT's battery cells are not interchangeable with VARTA cells because SAFT cells are 6 millimeters shorter; (2) VARTA batteries include a guarantee of 10 year parts availability, while SAFT has no similar guarantee; and (3) vent plug tools used with SAFT batteries are not compatible with VARTA's vent plugs. Although the Army responded to these allegations in its report on the protest, VARTA offered no further argument or evidence in support of these contentions and, thus, appears to have abandoned these issues. The Big Picture Co., Inc., B-220859.2, Mar. 4, 1986, 86-1 CPD ¶ 218.

The protest is denied.

for Seymour Efros
Harry R. Van Cleve
General Counsel